

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

JONATHAN LYNN LUTEN,

Petitioner,

v.

No. 1:20-cv-01113-JDB-jay

UNITED STATES OF AMERICA

Respondent.

ORDER CONSTRUING DOCUMENT AS A MOTION TO AMEND THE PETITION,
DIRECTING RESPONDENT TO RESPOND TO THE MOTION TO AMEND,
AND
HOLDING MOTION FOR COUNSEL IN ABEYANCE

On May 20, 2020, Petitioner, Jonathan Lynn Luten, filed a pro se motion to vacate, set aside, or correct his sentence (the “Petition”), pursuant to 28 U.S.C. § 2255. (Docket Entry (“D.E.”) 1.) Respondent, United States of America, filed a response to the Petition on January 6, 2021. (D.E. 11.) Petitioner did not submit a reply. On July 28, 2022, Luten filed documents recorded as “Motion to File Second Successive 2255” (D.E. 15) and “Motion to Appoint Counsel” (D.E. 16).¹ The Court CONSTRUES the former as a motion to amend the Petition to assert two claims: that Petitioner’s prior Tennessee conviction for civil rights intimidation is not a predicate under the Armed Career Criminal Act, 18 U.S.C. § 924(e), in light of the Supreme Court’s decision in *Borden v. United States*, 141 S. Ct. 1817 (2021), and because Luten “didn’t serve a year and a day on that charge.” (D.E. 15. at PageID 44.) In his motion for counsel, Petitioner asserts that he needs an attorney to assist him in pursuing these putative claims.

¹ Because Petitioner originally filed the documents in his criminal case, the Court directed the Clerk to refile them in the present matter. (*See United States v. Luten*, 1:15-cr-10024-JDB-1, D.E. 170 (W.D. Tenn.).)

Respondent is ORDERED to respond to the motion to amend within twenty-eight days of entry of this order. The response shall include a discussion of all relevant affirmative defenses that the Government believes would render amendment of the Petition futile. The inmate may file a reply to the response within twenty-eight days of service of the response. Ruling on the motion for counsel is HELD IN ABEYANCE pending briefing on the motion to amend.

IT IS SO ORDERED this 28th day of September 2022.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE